UNITED
NATIONS

E

Economic and Social
Council

Distr
GENERAL

E/CN.4/2000/82
6 January 2000

ENGLISH
Original: SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-sixth session
Item 14 (a) of the provisional agenda

SPECIFIC GROUPS AND INDIVIDUALS

MIGRANT WORKERS

Human rights of migrants

Report of the Special Rapporteur, Ms. Gabriela Rodriguez Pizarro, submitted pursuant to Commission on Human Rights resolution 1999/44

GE.00-10036 (E)

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Executive summary

In accordance with Commission on Human Rights resolution 1999/44, the Special Rapporteur on the human rights of migrants, Ms. Gabriela Rodriguez Pizarro, is submitting her first report. The first part of the text describes her activities under the mandate entrusted to her by the Commission. There follows a description of the context of the feminization of migration and the international community's growing interest in the phenomenon, which has led to various initiatives.

That description is followed by the first outline of the work programme itself, the main purpose of which is to collect information in order to be able to submit reports to the Commission at its fifty-seventh and fifty-eighth sessions, as well as to make recommendations to the bodies concerned. This includes the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Information will be collected from all sectors, including migrants themselves, and will take into account the gender perspective. The work programme should also include close monitoring of intergovernmental and intersectoral initiatives already under way to tackle the problem of migration, and observer missions to countries affected by the phenomenon.

The second part of the report is devoted to an initial examination of the international instruments available for the protection of the human rights of migrants and highlights the lack of a comprehensive definition of existing categories of migrants. This examination takes into account the net effects of the domestic laws and regional agreements regarded as critical for the defence of the human rights of migrants. Special emphasis if placed on the need to take into account the problem of trafficking in persons (not only for the purposes of prostitution) and the implications of returning undocumented migrants to their places of origin. In this chapter, the Special Rapporteur proposes that a working definition of the category of migrant should be formulated, and that the adoption of existing instruments covering the rights of one or more of the categories discussed should be recommended and encouraged.

Lastly, the report presents some comments by the Special Rapporteur on areas considered suitable for further research: the link between migration and the increase in racism, discrimination and intolerance, and a more detailed examination of the issues surrounding women migrants and their implications for a gender-based approach to the phenomenon of migration. This section is followed by observations on migration issues as they affect children. Lastly, it is explained how, from this perspective, the concept of vulnerability applies to migrants and how considerations of the obstacles to the protection of their rights, which were noted by the working group of intergovernmental experts on the human rights of migrants, are taken up. The report concludes with chapters on preliminary conclusions and some recommendations.

I. INTRODUCTION

1. At its fifty-fifth session, the Commission on Human Rights adopted resolution 1999/44, by which it decided to appoint, for a three-year period, a special rapporteur on the human rights of migrants to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of this vulnerable group, including obstacles and difficulties for the return of migrants who are undocumented or in an irregular situation. The Special Rapporteur should formulate strategies and recommendations for the promotion and implementation of policies to protect the human rights of migrants, and establish the criteria on which those policies should be based.

2. In the same resolution, the Commission invited the Special Rapporteur, in the performance of his/her functions, to request and receive information from all relevant sources, including migrants themselves, on violations of the human rights of migrants and their families, to promote the effective application of relevant international norms and standards on the issue, and to recommend actions and measures applicable at the national, regional and international levels to eliminate violations of the human rights of migrants.

3. The Commission requested the Special Rapporteur to take into account a gender perspective when requesting and analysing information, a perspective that will also be taken into account when analysing existing legislation and making recommendations. It also recommended that special attention should be given to the occurrence of multiple forms of discrimination and violence against migrant women.

4. Pursuant to this resolution, on 6 August 1999, the Chairperson of the Commission on Human Rights at its fifty-fifth session, after consultation with the members of the Bureau, appointed Ms. Gabriela Rodríguez Pizarro (Costa Rica) as Special Rapporteur on the human rights of migrants.

5. The Economic and Social Council, in its decision 1999/239, endorsed Commission on Human Rights resolution 1999/44.

6. Aware of the weighty responsibility entrusted to her, as well as the amount of work involved and the need to seek the support and cooperation of all relevant bodies, in compliance with resolution 1999/44, the Special Rapporteur submits this report to the Commission on Human Rights for its consideration.

7. The report consists of eight chapters. Chapters II-V describe the recent activities of the Special Rapporteur, the background to her mandate, an outline of her plan of action and a first look at the existing legal framework of international instruments relating to the rights of migrants. Chapter VI contains observations on the aspects considered relevant to the design of a strategy for the human rights of migrants, including some of the main obstacles to the full protection of migrants' rights. The last part of the document consists of the preliminary conclusions and recommendations of the Special Rapporteur (chapters VII and VIII).

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

8. The Special Rapporteur visited Geneva between 13 and 17 September 1999. During her stay, she held consultations with staff members of the Office of the High Commissioner for Human Rights and with the High Commissioner herself, as well as with members of intergovernmental bodies and representatives of non-governmental organizations (NGOs), and drew up a plan of activities for the three years of her mandate.

9. The Special Rapporteur visited New York between 4 and 6 November and once again met the High Commissioner, as well as special rapporteurs and NGOs. She was back in Geneva between 25 November and 2 December to meet representatives of the permanent missions and officials of intergovernmental, international and non-governmental organizations.

10. On the latter occasion, she attended a meeting of the International Steering Committee of the Global Campaign for Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

11. As a first step, and in compliance with the provisions of paragraph 5 of Commission on Human Rights resolution 1999/44, the Special Rapporteur sent out, on 27 September 1999, a letter to Governments, the specialized agencies of the United Nations, the chairpersons of treaty bodies, and NGOs, requesting information relevant to her mandate. She is especially interested in receiving information on measures being taken in response to the questions raised by the issue of the human rights of migrants, with a view to formulating suitable recommendations to the Commission.

12. The information provided in the replies to her letter is now being studied by the Special Rapporteur and will be reflected in her oral presentation of this report to the Commission at its fifty-sixth session.

III. BACKGROUND

13. The international community's growing interest in human rights issues has meant that migrants' rights have begun to receive special attention. In addition to the initiative taken by the Commission and the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in 1993 (part II, paras. 33-35), the Programme of Action of the International Conference on Population and Development held at Cairo (chapter X), the Programme of Action of the World Summit for Social Development, held at Copenhagen (Programme of Action, chapter III), and the outcome of the Fourth World Conference on Women, held in Beijing (Platform for Action, chapter IV, section D), devote special attention to the issue of migrants' human rights. The working group of intergovernmental experts on the human rights of migrants has made a considerable contribution to our knowledge of this phenomenon and to identifying the current obstacles to the full and effective exercise of their human rights by that "vulnerable group".[1] Intergovernmental bodies have promoted a number of initiatives to establish a dialogue between Governments in regions that have to deal with the

same migrant issues. A similar interest has been shown by sectors of civil society and has been brought to the attention of the general public all round the world by the news media. The news services tend to highlight the problems of trafficking in persons, particularly women and children, and the widespread abuse of undocumented workers in the informal economy.

14. The Special Rapporteur notes that migration occurs for a variety of reasons: people are unable to remain in their own countries mainly because of poverty and because they cannot earn a living for themselves or their family, and because of civil conflicts and insecurity or persecution for reasons of race, ethnic origin, religion, language or political views. The States whose citizens migrate for these reasons share these problems with the States which receive large numbers of migrants. Human rights violations hypothetically arise for the receiving or "desired" State that rejects inflows of migrants. Such violations occur insofar as the national populations cannot be contained within their home countries. A common outcome of this phenomenon is that people become undocumented cross-border migrants.

15. Estimates of the different categories of migrant suggest that a total of between 120 and 130 million people are outside their countries of origin. The International Labour Organization (ILO) estimates that between 70 and 80 million of these are so-called "migrant workers", while the Office of the United Nations High Commissioner for Refugees (UNHCR) reports that there are 21.5 million refugees and reckons that there are 30 million displaced persons. In 1997, ILO estimated that the number of migrant workers was as follows: Africa, 20 million, North America, 17 million, Central and South America, 12 million, Asia, 7 million, the Middle East (Arab countries), 9 million, and Europe, 30 million. There are massive movements of migrants towards the North, but there is more and more movement between the countries of the South. Women and children account for more than half of the refugees and internally displaced persons, and their proportion is increasing in the case of the other categories of migrants, including migrant workers.

IV. PLAN OF ACTION

16. The Special Rapporteur outlined a plan of action for the three-year period of her mandate. In this context, the Special Rapporteur considered that, in addition to the definition of the legal framework, which can be found in paragraph 25 and the following paragraphs and which should be broadened in the way described in that section, a survey of regional initiatives needs to be carried out so that the Governments of home countries and/or transit countries can enter into dialogue with those of countries that are traditionally seen as migrant destinations. Some of these initiatives, which are at varying stages of development, bear the name of the cities or regions where they were launched: the Puebla process,[2] the Manila process, the Bangkok initiative (the Bangkok Declaration) and the Dakar, Mediterranean, Cairo, Lima and Commonwealth of Independent States (CIS) initiatives.

17. As her contribution to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, due to be held in 2001, the Special Rapporteur intends to submit a paper to the Preparatory Committee at its first session in May 2000. That paper will deal with the substance of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination, with particular reference to the forms of intolerance present in migrants' home countries, as well as in transit countries and countries of destination.

18. In addition to the reports planned for the fifty-sixth, fifty-seventh and fifty-eighth sessions of the Commission, the Special Rapporteur believes it is important to produce a programme to prevent the various kinds of discrimination against migrants. This programme will be proposed after consultations with Governments and intergovernmental and non-governmental organizations.

19. She will also consult the Governments of countries in the African, Asian, American and European regions with a view to finding out about migration policies, in order to start a dialogue between Governments and civil society aimed at finding specific ways of dealing with the obstacles faced by migrant populations seeking recognition of their rights. A dialogue on policy measures and actual practice in this area is vital at the national and regional levels.

20. The Special Rapporteur believes it is crucial to support the campaign for the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as other international human rights instruments.

21. The Special Rapporteur acknowledges the important work on the ratification of the International Convention carried out by the Steering Committee of the Global Campaign for Ratification of the Convention[3] through its secretariat in the International Migrants Rights Watch Committee.

22. The Special Rapporteur also acknowledges the important work carried out by the working group of intergovernmental experts on the human rights of migrants in giving an overall picture of the phenomenon of migration and in identifying the main obstacles to the full protection of the human rights of migrants.

23. As part of this process of documentation, the Special Rapporteur plans to examine relevant domestic policies and laws. This examination will be carried out with due regard for international norms and treaties, the case law of the international human rights treaty bodies, the recommendations and agreements adopted at international conferences, the measures and decisions taken by the United Nations and international organizations, and the case law and other measures of regional organizations.

24. With regard to the national contexts, the Special Rapporteur plans to compile a set of recommendations on measures to overcome the obstacles to the prevention of discrimination against migrants, basically with respect to: legislation and legal measures; administrative and governmental measures at the national, regional and local levels; the responsibilities of employers and entrepreneurs; the requirements for the dignified return of undocumented migrants; and actions by both civil society and States to take up all the issues relating to the human rights of migrants.

V. LEGAL FRAMEWORK: THE HUMAN RIGHTS OF MIGRANTS

25. If her work is to be effective, the Special Rapporteur believes a working definition of the concept of a migrant must be found. Since even the general term "migrant" has not been defined

in either international law or policy, a working definition needs to be found that will make it possible, in particular, to recognize and draw attention to situations in which the human rights of individuals can be protected by means of a legal, social and political framework.

26. Within the broad spectrum of international migrations there are some official definitions of certain categories of migrants, such as "migrant worker" or "migrant", which are defined in, respectively, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and ILO Conventions Nos. 97 and 143. There is also a definition of a refugee in the Convention and Protocol relating to the Status of Refugees.

27. The above-mentioned instruments or the rules for their implementation include definitions of various subcategories, such as asylum-seekers, people in situations similar to those of refugees and various specific categories of migrant workers (frontier workers, seasonal workers, etc.). Work is being carried out in the context of the draft protocol on trafficking in persons to the draft convention against transnational organized crime on the definition of the persons who are the victims thereof (trafficking in persons). This definition should also be examined in the light of the concept of the migrant, which the Special Rapporteur intends to establish as part of the plan of action.

28. There is no commonly accepted generic or general legal concept of the migrant in international law. It is often said that, by definition, many international migrants are not refugees and a large number of them are not migrant workers either. This is especially true in the case of the many migrants who are undocumented or in an irregular situation, including the victims of trafficking in persons, who are the most vulnerable to potential or actual violations of their human rights.

29. The Commission on Human Rights tacitly acknowledged the limitations of the term "migrant workers" when it established, first, the working group of intergovernmental experts on the human rights of migrants and, more recently, the post of Special Rapporteur on the human rights of migrants.

30. Definitions that are related to the reasons why people leave their countries of origin are perhaps the least suitable kind of definition, except to the extent that they give access to legal protection and status in the host country, as in the case of refugees. In the light of the political, social, economic and environmental situation of many countries, it is increasingly difficult, if not impossible, to make a clear distinction between migrants who leave their countries because of political persecution, conflicts, economic problems, environmental degradation or a combination of these reasons and those who do so in search of conditions of survival or well-being that do not exist in their places of origin.

31. There is a gap in international human rights jurisprudence in this area. The virtually universal system of protection for refugees means that violations of their civil and political rights can be recognized and remedied, especially when they pose such a risk to persons' lives and security that they are forced to flee their country. However, there is no such recognition of violations of economic, social and cultural rights, which can also be serious enough to force

people to flee their places of origin. Consequently, there is no recognition of the need to protect in any way people who do not want, or are unable, to return to situations in which the lack of fundamental economic, social and cultural rights makes it extremely difficult or impossible to survive.

32. People whose colour, physical appearance, dress, accent or religion are different from those of the majority in the host country are often subjected to physical violence and other violations of their rights, independently of their legal status. The choice of victim and the nature of the abuse do not depend on whether the persons are refugees, legal immigrants, members of national minorities or undocumented migrants.

33. Consequently, in order to give a definition of a migrant that is based on human rights, the first and most important step is to see whether or not the rights of those persons enjoy some form of legal, social and political protection.

34. Although the concept of vulnerability is useful for emphasizing the lack of protection of migrants, there is no reason to link it with the concept of weakness. It is also recognized that migrants in an irregular situation are in a particularly difficult position. The Special Rapporteur stresses that this consideration of vulnerability is the only one that makes it possible to protect migrants by empowering them.

35. On the basis of these considerations, an initial proposal for a basic definition of a migrant that takes into account his or her human rights would contain the elements given in the following paragraph.

36. For the purpose of studying and strengthening the protection of the human rights of migrants, the following can be considered as migrants:

(a) Persons who are outside the territory of the State of which they are nationals or citizens, are not subject to its legal protection and are in the territory of another State;

(b) Persons who do not enjoy the general legal recognition of rights which is inherent in the granting by the host State of the status of refugee, permanent resident or naturalized person or of similar status, and

(c) Persons who do not enjoy either general legal protection of their fundamental rights by virtue of diplomatic agreements, visas or other agreements.

37. Also for the purpose of studying and strengthening the protection of the human rights of migrants, attention should be given, as a matter of priority, to migrants in an irregular situation. The human rights of undocumented migrants are also a cause for concern, like the rights of the victims of trafficking. Another cause for concern is the rights of other groups or categories of persons who are vulnerable to discrimination and the denial of their rights and who are legally, socially and politically the most disadvantaged in the places where they live.

38. A review of past practice shows that the Constitution of the Intergovernmental Committee for European Migration refers to migrants in its article 1, paragraph 1,

subparagraph (a), on its purpose and functions. The term is understood as covering all cases of persons whose decision to migrate is taken freely, for reasons of personal convenience, and without intervention of an "external compelling factor".[4] As far as the perceived reasons for migrating are concerned, the voluntary nature or otherwise of the move is a point that will need to be borne in mind and given priority in later discussions aimed at reaching a definition of the term "migrant" that is closer to the reality of this complex phenomenon.

39. The term "migrant worker" is defined in article 2 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as:
"... a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national".

40. This definition includes undocumented workers who enjoy certain rights recognized in part III ("Human rights of all migrant workers and members of their families") of the Convention. Article 2, paragraph 2, contains definitions of several specific categories of migrant workers, such as frontier workers, seasonal workers, seafarers, workers on offshore installations, itinerant workers, project-tied workers and self-employed workers. The definition in article 2 refers exclusively to migrant workers who are outside their own country. The Special Rapporteur expresses her concern at the shortcomings of a legal framework that disregards desperately poor migrants whose rights need to be protected by categorizing them as "economic migrants". In many of these cases, the departure has been prompted by violence and the conditions that lead to migration are similar to those that give rise to forced displacement or asylum-seeking.[5]

41. Other categories of persons that ought to be mentioned are former refugees, persons who were once externally displaced, and demobilized soldiers. Several of these new kinds of migrant can be found in Central America. For example, once the peace agreements had been signed, those persons who had been resettled and reintegrated became classified as migrants in an irregular situation, and their problems were not resolved in a dignified way. Another important category is that of women who have been subjected to trafficking or forced into prostitution, and who have no status in the countries of destination, despite efforts to eradicate that practice.[6]

42. The Special Rapporteur believes it is important to distinguish between "migrant workers" and "refugees and stateless persons", as the International Convention applies to the former but not the latter. On this point, the Convention differs from the four ILO conventions on migration, which apply to refugees and displaced persons as long as they are workers employed outside their home country.[7] Similarly, the Constitution of the Intergovernmental Committee for European Migration (subsequently the International Organization for Migration (IOM)) stipulates that the Organization will deal with refugees, displaced persons and others forced to leave their home country who require international migration services.

43. The Special Rapporteur therefore believes that a provisional definition of a migrant that takes into account his or her human rights and the concepts already defined should be adopted in the near future, but the possibility must be left open of further refining the definition subsequently.

VI. OBSERVATIONS

A. Discrimination and intolerance

44. In the Third Decade to Combat Racism and Racial Discrimination, there has a been an alarming upsurge in intolerance, discrimination, racism and xenophobia in the form of outright violence against migrants in practically every region in the world.

45. As stated in working paper E/CN.4/AC.46/1998/5, "One of the most relevant factors which led the Commission on Human Rights to create the working group on international migrations and human rights was 'the increasing manifestations of racism, xenophobia and other forms of discrimination and inhuman and degrading treatment against migrants in different parts of the world' (resolution 1997/15)."[8]

46. Racism, racial discrimination, xenophobia and related intolerance may be aggravated by, inter alia, inequitable distribution of wealth, marginalization and social exclusion. New communication technologies, including such computer networks as the Internet, are being used to disseminate racist and xenophobic propaganda. Racial discrimination against migrant workers continues to increase despite efforts undertaken by the international community to protect the human rights of migrant workers and members of their families (see General Assembly resolution 53/132).

47. The Special Rapporteur believes that the core of the problem lies in everyday customs, which is where the primary manifestations take place and where they are the most ingrained. Such customs are linked to a number of forms of behaviour that must be rooted out by taking specific and determined action to promote human rights and democracy.

48. A sense of alienation is part of being a migrant. Moreover, racial and ethnic conflicts were often at the origin of the great migrations of our era. Migrant populations who suffer from such violations do not necessarily have the status of a non-national and persons engaging in discriminatory acts are generally unaware of the migrant status of their victims.

49. Only in a few cases, where other more political and military considerations are involved, do such racial and ethnic conflicts lead to armed conflicts. Where that has not happened, migrant populations within and outside their own countries also suffer from discrimination and racism.[9] This aspect of intolerance at the origin, in transit and at the destination of migrants is an important point where the issues related to racial discrimination and ethnic conflicts intersect with those related to movements of people.

50. The implications of this link between migration, racial discrimination and ethnic conflicts are even more disturbing when it comes to the problem of the return and reintegration of migrants who may have been sent back because they were undocumented in their "desired" destinations. In addition to the issues raised by the right to development of these people, they have to face the consequences of the cultural and psychological effects of returning.

51. Discrimination against migrant workers in the field of employment takes many forms, such as limitations or preferences with regard to the kind of work they can do. Some contracts

deny migrants certain advantages and also apply rules on job security that differ from those applied to nationals, sometimes they are excluded from the regulations on working conditions and denied the right to take part in trade union activities. The ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) deals, in its part I, with migrations in abusive conditions and, in its part II, with equality of opportunity and treatment.

52. The incorporation of this complex set of issues into international standards is one of the features of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which has been ratified by 12 countries.

53. As regards the children of migrants, there is resistance in some States to registering or enrolling the children of immigrants in school for fear that the general educational level will fall. In dealing with this issue, it should be remembered that those children have to adapt to different customs and languages, unless special measures are taken to help them overcome their difficulties.

54. In many countries, there are laws and practices that discriminate against foreigners seeking work in a country that is not their own. The granting of visas on the basis of the applicant's country or continent of origin and labour market regulations based on discriminatory criteria, together with xenophobia in the name of national security, nationalism or national preferences, are some of the most common realities that migrant workers have to live with and that give the Special Rapporteur cause for concern.

B. Violence against women migrant workers

55. The Special Rapporteur believes it is very important to tackle the problem of violence against women migrant workers as a vulnerable group.

56. Due to their double marginalization as women and as migrants, women migrant workers may easily find themselves in situations in which they are vulnerable to violence and abuse, both at home and at work (see E/CN.4/1998/74/Add.1). Women migrant workers dominate the informal labour market of most countries, working as domestic, industrial or agricultural labour or in the service sector. When women, most of whom are heads of household, find themselves in social circumstances that make it difficult for them to find paid work, they are forced to migrate. The way in which gender roles are traditionally established and the fact that men often do not share the domestic chores, particularly looking after children on a daily basis, make it even more difficult for women to develop personally and professionally. That situation often discourages women from staying in their families and/or places of origin. Migrant women, like many other women who do not migrate but who work outside the home, often leave their children in the care of family members or someone else. In many cases, particularly when the father is mostly or completely absent, this leads to the loss of sources of affection and to family breakdown. Both women who have been the victims of trafficking and those who migrate voluntarily may end up in situations of exploitation, violence and abuse, all of which have their origin in a situation like the one described above. The exchange of sexual favours for permission to transit, which is common practice on some frontiers, is also a form of gender-based harassment to which migrant women are often subjected.

57. The situation of women migrant workers within most social structures is one of heightened marginalization, often exacerbated and implicitly condoned by the State (see E/CN.4/1997/47).

58. In this connection, at its fifty-fourth session, the General Assembly adopted, on 17 December 1999, its resolution 54/138, on violence against women migrant workers, in which it requested all Governments to cooperate with the Special Rapporteur on the human rights of migrants in the performance of the duties mandated and to furnish promptly all the information requested. The General Assembly encouraged Governments, particularly those of countries of origin and destination, to share information on violence against women migrant workers with the Special Rapporteur with a view to requesting her to recommend concrete measures and actions to address the problem.

59. In astonishingly large numbers, women are migrating great distances across international boundaries to engage in poorly remunerated labour that isolates them in a subordinate position in a private realm. As a result, they are exposed to acute risks of physical or psychological violence and, often, to expropriation of their economic gains.

60. The lack of protection and regulations governing informal labour is at the origin of women migrant workers' dependence on their employer. Because of that lack, women often lose their right to reside in the host country if they leave their employer, even in cases of ill-treatment. In many countries, migrant workers are not permitted to change their employers, and the woman worker who finds herself in that situation is compelled to stay with her employer until either she leaves the country or is granted the right to legal residence status.

61. Women migrants, particularly domestic workers, are usually unable to escape from a situation of ill-treatment because they have no legal status. Mechanisms of support and assistance for women workers in violent situations exist in some countries of destination but are often inaccessible to women migrants because they do not speak the language, lack mobility or do not know that such organizations exist.

62. Many of these women workers seek protection at the embassies of their home countries, but some of these do not have adequate facilities or programmes to take care of them. The most frequently cited factors which "restrict women migrants' ability to leave situations of forced labour [are] (a) the lack of alternate employment; (b) the lack of legal literacy, particularly in regard to workers' rights; (c) the financial obligations to her family and their dependence on her income; (d) the lack of financial resources; (e) the fear of deportation; (f) restrictions on her movement; (g) the lack of identity papers; (h) the fear of arrest; (i) violence by traffickers and employers; (j) debt bondage and the often concurrent fear of retaliation against her family for not paying debts; and (k) the fear of reprisals" (E/CN.4/1997/47, para. 133).

63. The kinds of abuse and violence suffered by women migrant workers include the withholding of their wages, acts of physical and sexual violence, undernourishment, the seizure of their passports, and the lack of medical and health care.

64. According to the most recent estimates, there are today about 130 million international or "non-national" migrants in the world. Women account for 50 per cent of this figure, although

country statistics are regrettably scarce and take virtually no account of those without the necessary documentation. An estimated 30 million people come into the latter category, and women account for an increasing number of them.

65. The United Nations is concerned at the difficult situation of women migrant workers, as many of them have been the victims of gender-based violence. Migrant workers' lack of education, training and knowledge means they are easily deceived. The Fourth World Conference on Women, held in Beijing in September 1995, analysed the situation of migrant women and called on States to recognize the vulnerability of those women to violence and other forms of abuse. Particular attention was devoted to migrant women whose legal status in the host country depended on employers. The Platform for Action (chapter IV, section D) that came out of the Conference urged Governments to establish linguistically and culturally accessible services for migrant women and girls, including women migrant workers, who were victims of gender-based violence.

66. Although it is a research topic of growing interest, little attention has been paid to gender distribution in the various categories of migrants and its consequences for the families and communities in their places of origin.

C. Situation of migrant children

67. According to data from the ILO Statistics Office,[10] 96 per cent of children who work and sleep in the streets are migrants. They live in dire poverty and destitution, with no fixed place of work and no parents to take care of them or look after them. Many of them have stopped going to school. Forty-six per cent of street children are girls, aged between 8 and 14. According to the same sources, the average age of girls is lower than that of boys.

68. In *The State of the World's Children 1995*, UNICEF stresses that it is children who must suffer the consequences of the Third World's debt. The same report points out that the worst-hit areas are the education and development of children.

69. The main factor behind the migration of child labour is poverty and family destitution. Other contributing factors are the break-up of the family as a result of poverty, the lack of a working father or mother and the death of the father or mother or the invalidity of both. In a number of countries, child workers come from poor migrant families and, in some of them, cultural values support early entry into the labour market. Because of their inexperience and age, children are taken on for badly paid and menial jobs, jobs where they are particularly vulnerable to exploitation in the workplace (in terms of social and health care), manual jobs (breaking stones, weaving carpets), and work in factories. The growing numbers of children attracted by the lure of the tourist industry are vulnerable to sexual exploitation.

D. Vulnerability

70. There are different perspectives on the vulnerability of migrants. Those perspectives vary according to whether the States concerned are countries of origin, transit or destination for migrants. Consequently, the differences between those perspectives becomes more pronounced with respect to problems stemming from the integration of migrants into the host society; social,

religious and linguistic differences, the relationship between State sovereignty and undocumented migration, or problems stemming from the trafficking in migrants. "An essential element in the understanding of vulnerability was the factor of powerlessness which, more often than not, characterized the migrant" (E/CN.4/1998/76, para. 45).

71. In her address at the University of Oxford in 1997, the United Nations High Commissioner for Human Rights said that "one lesson we need to learn, and to reflect in our approach, is that the essence of rights is that they are empowering". Thus, vulnerability is understood as a condition of a lack of empowerment, a condition imposed on a person by the power structure of a country. There is a structural and cultural vulnerability ascribed to non-nationals, foreigners or immigrants by the "nationals" of a given country. The structural nature derives from the existence of a power structure which shows that in any given national society, some have more power than others.

72. The cultural nature of vulnerability derives from the set of cultural elements (stereotypes, prejudices, racism, xenophobia, ignorance and institutional discrimination), with derogatory meanings which tend to justify the differences between "nationals" and non-nationals or migrants.

73. The combination of (a) power differentials based on a structure where the immigrant is at a lower level than nationals, with (b) the set of cultural elements which justify it, results in various degrees of impunity in cases of the violation of the human rights of a migrant. This impunity then becomes an empirical indication of the powerlessness of the migrant, which is equal to his or her vulnerability. " 'Impunity' here is understood as the absence of economic, social or political costs for the violator of the human rights of a migrant" (E/CN.4/AC.46/1998/5, para. 30).

74. Vulnerability is not a condition that immigrants take with them to the country of destination, whether or not their entry into a given country is legal. It is not intrinsic to racial characteristics, or to a country or ethnic origin, or to the development conditions of the country or region of origin. What is intrinsic to the condition of every human being and thus to every migrant, wherever he or she may go, is the ability to transcend situations imposed against his or her will. In this commitment, the empowering function of human rights protection plays a fundamental role.

E. Obstacles to full protection

75. An important part of the mandate contained in resolution 1999/44 is to gather information on the obstacles to the full and effective protection of the human rights of migrants.

76. The obstacles identified by the working group of intergovernmental experts are categorized as institutional, social and economic, some of them deserve special attention.

77. One of the basic institutional obstacles is the absence or non-acceptance in domestic legislation of universal standards which explicitly recognize the human rights of migrants. Many countries have incorporated human rights standards into their domestic legal systems, although their application has, in the best of cases, been restricted to their own citizens. Another

institutional obstacle is the failure to achieve widespread ratification of international instruments dealing with migrants' rights, such as ILO conventions No. 97 and No. 143 and the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

78. The vulnerability of migrants is another significant obstacle: human rights abuses related to deportations and inadequate training of officials in human rights matters can be counted as institutional obstacles.

79. Among the social obstacles confronting migrants are social exclusion and the concentration of migrant households in disadvantaged urban areas, which make access to education, health care or employment more difficult. Even more seriously, the social obstacles include segregation and hostility, stereotyping, xenophobia and racism.

80. There are some groups of migrants who hover on the fringes of the documented and undocumented sectors. They include, in the first place, women used for pornography and prostitution; domestic workers, most of whom are women; and farm and seasonal workers, who seem to be particularly vulnerable to rights abuses because of their short-term employment, low educational level and labour legislation that favours agro-business.

81. A large number of countries are unwilling to ratify the human rights standards of the United Nations and ILO. This unwillingness is the result of real people defending real interests with the backing of real power bases - the very people who are often responsible for the obstacles to the full application of these human rights standards.

VII. PRELIMINARY CONCLUSIONS

82. Contemporary trends in migrant movements in the era of globalization pose a challenge to the protection of the human rights of that large sector of the world's population. The first challenge is to define a concept of migrant populations that will cover new situations and to translate that into definitions in the international instruments. The situations referred to are those in which a large number of persons find themselves after leaving their country of origin or even before they do so. Unlike refugees, these populations have no formal status that affords them international protection. In many cases, these same groups and individuals do not fit into the category of migrant worker. This shortcoming in terms of definitions is all the more serious if we bear in mind that well-founded field studies show that more and more of today's migrants are women on whom there are no data.

83. The phenomenon of women migrants is a sign of the growing participation of women in remunerated productive activities. The same phenomenon is also a manifestation of a change in the social fabric, the main feature of which is the increase in the number of households headed by women. In many cases, the new family situation arises when the father migrates or leaves his family.

84. Households in which the mother has to migrate in search of a better standard of living for its members, as well as households in which the mother stays behind while the father migrates, are becoming increasingly common, and will become a defining characteristic of societies in many countries in the twenty-first century.

85. The changes in lifestyle implied by these new roles also determine how individuals in these families are prepared for working life. Often, these households are the same as those in which the phenomenon of child migration is most common. In addition to all that, the consequences of changing roles, particularly with regard to the use and control of resources and decision-making within the family, need to be dealt with. Often, these changes in households find outward expression in alarming episodes of physical and psychological domestic violence.

86. As well as the question marks concerning definitions, the limitations of international legislation have also to be considered. It is only the International Convention of 1990 which does not restrict itself exclusively to references to migrant workers but also includes members of their families. This Convention has not yet entered into force, if it were to do so, it could be an important tool for the protection of the rights of migrants, including those of undocumented migrants.

87. The documents relating to the Third Decade to Combat Racism and Racial Discrimination and, in particular, those relating to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance also discuss discrimination against migrant workers (see E/CN.4/1998/78). The provisions of the international conventions on migrant workers address discrimination in employment. Although the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child cover migrant women and children, they do not deal specifically with the rights of those persons who are in transit outside the borders of their country. Those vulnerable groups receive special treatment in the analysis of the issue of trafficking in women and children. However, the issues of migrant women and children are not limited to the problem of trafficking.

88. Trafficking in persons is the aspect of migration about which the international community is particularly concerned. The concept of trafficking can be approached from various perspectives. The term should be distinguished from "smuggling". Whereas trafficking may include a complex organization of contacts, smuggling refers solely to unlawful border-crossing services. Trafficking in persons in particular involves violations of a number of international conventions. This applies to persons who are victims at the moment of departure, transit and arrival in the country of destination.

89. The Special Rapporteur believes that special emphasis should be laid on the problem of the forms of intolerance that arise when the reinsertion of migrant populations is completed. Similar emphasis should be laid on dealing with the intolerance that impels these groups to migrate.

90. The day-to-day problems faced by migrants, especially by women migrants who have suffered from systematic gender-based violence and who have been unable to get a satisfactory

response from the relevant authorities, are also a cause of deep concern and, as in the case of the preliminary conclusions noted above, effective action must be taken to resolve them and to protect the rights of that sector of the population.

VIII. RECOMMENDATIONS

91. The Special Rapporteur makes the following recommendations:

(a) In order to allow the Special Rapporteur to carry out her mandate, an inter-agency task force should be established to assist her and the Office of the High Commissioner for Human Rights in their work. The objectives of the task force would be: to contribute to research; to provide expert knowledge on how to deal with the topic in order to enhance the work of the Special Rapporteur; to collect and transmit systematically the data and information available on the situation of migrants in various countries; to facilitate the contacts the Special Rapporteur needs to make in order to fulfil her duties; and to help in the preparation of her reports to the Commission;

(b) Intersectoral cooperation should be promoted to collect and analyse specific cases to illustrate the emerging categories of migrants without protection;

(c) Existing standards and institutional arrangements for the full protection of migrants should be promoted, including the prevention of arbitrary expulsion, the return of undocumented migrants in dignified circumstances, and measures for the reinsertion of returnees, especially women who have been the victims of trafficking and persons belonging to national minorities;

(d) The forums for negotiation and discussion should be strengthened such as the Puebla process, the Manila process and the Bangkok, Dakar, Mediterranean, Cairo, Lima and Commonwealth of Independent States (CIS) initiatives, by finding ways to include the civil and academic sectors in that framework;[11]

(e) Action should be taken to promote and lobby for the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

(f) Attention should be focused on the links between the topic of migration and the ongoing work of the Commission on Crime Prevention and Criminal Justice and, in particular, on the effects of trafficking and smuggling on migrants' rights;

(g) An intersectoral dialogue should be initiated to find ways and to develop specific policies to deal with migration issues and their implications for development, gender equity and the return and integration of repatriated migrants;

(h) The processes whereby multinational trading agreements are reached and country groupings formed should be monitored, with the aim of including in those processes a deeper analysis of the impact of globalization on the migration of people, thus averting situations in which the rights of migrants are violated;[12]

(i) Action should be taken to strengthen technical advisory services and training in international human rights instruments for civil servants and migration officials at all levels, while incorporating the gender perspective into work with migrant populations,[13]

(j) Cooperative action to draw up migration policies that prevent the recurrence of patterns of subordination, violence against women migrants and gender-based discrimination should be encouraged,[14]

(k) Governments should be urged, in forums for negotiations and discussion, to take steps to prevent the trafficking in persons, and

(l) Close links should be established between the protection of migrants' rights and the work of the Preparatory Committee for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (to be held in 2001) as a way of documenting the cases of mass migrations caused by discrimination and by racial and ethnic conflicts. Of particular interest is the link between this phenomenon and factors that encourage people, especially women, to migrate.[15]

Notes

[1] See the working paper prepared by Mr. Jorge A. Bustamante, Chairman/Rapporteur of the working group of intergovernmental experts on the human rights of migrants (E/CN.4/AC.46/1998/5).

[2] See the report of the Secretary-General on international migration and development, including the convening of a United Nations conference on international migration and development (A/52/314), paras. 50-52.

[3] The members of the Steering Committee are: European Union Migrants' Forum, Inter-American Institute of Human Rights, International Catholic Migration Commission, International Commission of Jurists, International Confederation of Free Trade Unions, International Labour Organization, International League for the Rights and Liberation of Peoples, International Migrants Rights Watch Committee, International Organization for Migration, Migrants Forum in Asia, Office of the United Nations High Commissioner for Human Rights, Public Services International and World Council of Churches.

[4] Perruchoud, "Persons falling under the mandate of the International Organization for Migration (IOM) and to whom the Organization may provide migration services", 4 *International Journal of Refugee Law*, 205, 1992, p. 209, in IOM, *IOM and Effective Respect for Migrants' Rights*, Legal Services, November 1997 (http://www.iom.int/migrationweb/Focus_Areas/entrym.htm).

[5] See the discussion on "de facto refugees" in, for example, "Racism and intolerance versus refugees in the host country", prepared by Peter Nobel for the Seminar of Experts on Racism, Refugees and Multi-ethnic States, held at Geneva from 6 to 8 December 1999, pp. 5 et seq. (HR/GVA/DR/SEM/1999/BP.3).

[6] See the report of the Special Rapporteur on violence against women on her mission to Poland to study the issue of trafficking and forced prostitution of women (E/CN.4/1997/47/Add.1).

[7] See International Labour Conference, thirty-second session, Geneva, 1949, p. 285, in International Labour Office, *Migrant Workers*, Report III (part 1B), eighty-seventh session of the International Labour Conference, Geneva, 1999, p. 41.

[8] Para. 24. See note 1 above.

[9] See "Human rights as a way to strengthen multiracial and multi-ethnic States", prepared by Mario Jorge Yutzis for the Seminar of Experts on Racism, Refugees and Multi-ethnic States, held at Geneva from 6 to 8 December 1999 (HR/GVA/DR/SEM/1999/BP.2).

[10] See International Labour Organization, *Comprehensive and Reliable Data*, Children and Work No. 1 (June 1995), 190. *A Moment to Choose: Risking to Be with Uprooted People. A Resource Book.* Compiled and written by Helen Moussa, Patrick A. Taran and Martin Robra, World Council of Churches, Unit IV, Sharing and Service, Refugee and Migration Service.

[11] See the paper on the Puebla process prepared by the Government of El Salvador and IOM for the fourth regional conference on migration, held at San Salvador, from 26 to 29 January 1999.

[12] Within the scope of this recommendation, it is important to take into account the initiatives to establish a migration observatory in Europe. See "Feasibility study for a European migration observatory: final report", Migration Research Unit, Department of Geography, University College London; Institute for Minority and Ethnic Studies, University of Amsterdam; Centre for International Studies and Research, Paris, May 1996.

[13] See the International Migration Policy Programme, A Global Programme for Government Capacity-Building and Cooperation, under the auspices of UNFPA, UNITAR, IOM and ILO.

[14] See the report of the Special Rapporteur on violence against women to the Commission on Human Rights at its fifty-third session (E/CN.4/1997/47) and the report of the Secretary-General on violence against women migrant workers to the Commission at its fifty-fourth session (E/CN.4/1998/74).

[15] See the report of the Secretary-General on the implementation of the Programme of Action for the Third Decade to Combat Racism and Racial Discrimination and the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/54/299) and the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to the Commission on Human Rights at its fifty-fourth session (E/CN.4/1998/79).